

of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived only pursuant to paragraph (b) of this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.

(g) *Provisional applications.* A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section. Subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

[65 FR 57057, Sept. 20, 2000, as amended at 69 FR 56543, Sept. 21, 2004; 72 FR 18904, Apr. 16, 2007]

§ 1.138 Express abandonment.

(a) An application may be expressly abandoned by filing a written declaration of abandonment identifying the application in the United States Patent and Trademark Office. Express abandonment of the application may not be recognized by the Office before the date of issue or publication unless it is actually received by appropriate officials in time to act.

(b) A written declaration of abandonment must be signed by a party authorized under § 1.33(b)(1), (b)(3), or (b)(4) to sign a paper in the application, except as otherwise provided in this paragraph. A registered attorney or agent, not of record, who acts in a representative capacity under the provisions of § 1.34(a) when filing a continuing application, may expressly abandon the prior application as of the filing date granted to the continuing application.

(c) An applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition under this paragraph including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. Applicants should expect that the petition will not be granted and the application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

(d) An applicant seeking to abandon an application filed under 35 U.S.C. 111(a) and § 1.53(b) on or after December 8, 2004, to obtain a refund of the search fee and excess claims fee paid in the application, must submit a declaration of express abandonment by way of a petition under this paragraph before an examination has been made of the application. The date indicated on any certificate of mailing or transmission under § 1.8 will not be taken into account in determining whether a petition under § 1.138(d) was filed before an examination has been made of the application. If a request for refund of the search fee and excess claims fee paid in the application is not filed with the declaration of express abandonment under this paragraph or within two months from the date on which the declaration of express abandonment under this paragraph was filed, the Office may retain the entire search fee and excess claims fee paid in the application. This two-month period is not extendable. If a petition and declaration of express abandonment under this paragraph are not filed before an examination has been made of the application, the Office will not refund any part of the search fee and excess claims fee paid in the application except as provided in § 1.26.

[65 FR 54674, Sept. 8, 2000, as amended at 65 FR 57058, Sept. 20, 2000; 71 FR 12284, Mar. 10, 2006]

§ 1.139 [Reserved]

JOINDER OF INVENTIONS IN ONE APPLICATION; RESTRICTION

AUTHORITY: Secs. 1.141 to 1.147 also issued under 35 U.S.C. 121.

§ 1.141 Different inventions in one national application.

(a) Two or more independent and distinct inventions may not be claimed in